IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2062 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIPINBHAI R PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner
MR AY KOGJE AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/11/2006

ORAL JUDGMENT

1. Mr. A.R. Majmudar, learned counsel for the petitioner. Mr. A.Y. Kogje, learned AGP for the respondent-State.

2. By the present petition, the petitioner seeks to challenge the order dated 8.1.87 passed by the Deputy Secretary, Revenue Department [Appeals], whereunder permission dated 1.1.81 granted by the Taluka Development authority for use of the agricultural land as non-agricultural land was set aside.

3. Learned counsel for the petitioner submits that the land originally belonged to the respondents no. 3 to 5, who, in their turn, made an application to the Taluka Development Officer for conversion of use/change of use. The said permission was accorded by the respondent no.2, i.e. Taluka Development Officer, Halol, District-Panchmahals, in favour of the original owners. After the said permission, the original owners sold the property by registered document in favour of the present petitioner, who, after purchasing the property has established his factory in the premises. According to them, the State Government issued a notice dated 27.11.86 to the petitioner, so also to the original owners asking them to show cause that why

permission accorded by the Taluka Development Officer be not held to be incompetent and be not cancelled. The petitioner and the original owners appeared before the authority and submitted that the permission was in accordance with law and the Taluka Development Officer was competent to grant such permission. However, the submission made by the present petitioner did not find favour with the State Government/appellate/revisional authority, it accordingly recalled the permission. Being aggrieved by the said order, the petitioner is before this Court.

4. Shri Majmudar, learned counsel for the petitioner submits that in view of the authoritative pronouncement made by this Court in case of **Yashkamal Builders v. State of Gujarat [1989 [1] GLH 177]** and the other judgments which have followed the said dictum, it would clearly appear that the order passed by the said authorities is bad and cannot be allowed to stand. Learned counsel for the respondent-State, however, submits that the

order passed by the State Government was in accordance with law.

5. From the facts of the case, it would clearly appear that the State Government issued notice on the following grounds:-

[a] That the Taluka Development Officer had no authority to grant non-agricultural permission.

[b] That the permission from the Land Acquisition Officer was not obtained.

[c] While granting permission, the Taluka Development Officer did not consider as to what use the land would be put to after the non-agricultural permission is granted.

[d] That while granting permission, the Taluka Development Officer required the original owners to keep part of the land open and;

[e] That the permission accorded by the Taluka Development Officer was not valid, because, it was granted in favour of one only while application was made by number of

the persons.

6. So far as the competence of the Taluka Development Officer is concerned, from the above judgment, it would clearly appear that the Taluka Development Officer had competence to grant such permission.

7. The permission/No Objection Certificate from the Land Acquisition Officer was not needed in the present case, because, the land was never subjected to any acquisition. Even otherwise, it is not the case of the government or the revisional authority that the land was subject of some land acquisition proceedings. Condition to keep the land open would not be invalid, but in any case, if such condition is bad condition, its deletion would be in favour of the petitioner. The other conditions that permission was applied for by number of the persons and was granted in favour of one only would also not make much difference, because, the permission granted in favour of one would enure to the benefit of the others. The State

Government was also not justified in observing that the purpose to which the land would be put is required to be considered. In a given case, a party, on payment of the premium to the State Government, may ask for non-agricultural use permission and the State Government, through its Competent Officer, if is satisfied that such permission must be granted, then, the permission is to be unconditional. The government cannot say that non-agricultural use permission would be granted for one or particular use only.

8. Taking into consideration the totality of the circumstances, I am of the opinion that the order passed by the Deputy Secretary, Revenue Department [Appeals] on 8.1.87 in FRD/BKHP/192/86 deserves to be quashed, it is accordingly quashed. The order granting non-agricultural permission is restored. The petition is allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

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